Supreme Court, U.S.
FILED
DEC 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-826

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MICHAELA BERESTEANU GOLIN,

Petitioner,

v.

BROOKHAVEN NATIONAL LABORATORY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

MICHAELA BERESTEANU GOLIN
626 Dutch Neck Road
East Windsor, NJ 08520
Telephone: (609) 448-6592
Petitioner, pro se

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

Table of contents..... i

Table of authorities..... ii

Brookhaven's Basic Misconceptions.... 3

1. Brookhaven's Misconception of the "Prima Facie Case"..... 3

2. Brookhaven's Misconception of the Sexual Harassment Issue..... 6

A. The Laboratory's misreading of Vinson..... 6

B. The Laboratory's misconception of the quid pro quo issue.... 12

3. Brookhaven's Misconception of the Retaliation Issue..... 14

Conclusion..... 16

TABLE OF AUTHORITIES

Cases: Page

Barnes v. Costle,
561 F.2d 983 (CADC 1977)..... 9

Bundy v. Jackson,
641 F.2d 934 (CADC 1981)..... 7, 8

Fisher v. Flynn,
598 F.2d 663 (CA1 1979)..... 9, 12

Henson v. City of Dundee,
682 F.2d 897 (CA11 1982)..... 12, 13

Horn v. Duke Homes,
Div. of Windsor Mobile Homes, Inc.,
755 F.2d 599 (CA7 1985)..... 12, 13

Miller v. Bank of America,
600 F.2d 211 (CA9 1979)..... 10, 11

Taylor v. McKeithen,
407 U.S. 191 (1972)..... 15

United States Postal Service
Board of Governors v. Aikens,
460 U.S. 711 (1983)..... 3, 4, 5

Cases: Page

Vinson v. Taylor,
753 F.2d 141 (CADC 1985),
PSFS Savings Bank, FSB v.
Vinson, cert. granted, 84-1979,
106 S.Ct. 57 (1985)..... 6, 7, 8,
9, 11, 12

Statutes:

Title VII of the Civil Rights Act
of 1964, as amended,
42 U.S.C. § 2000e et seq..... 4, 5, 7,
11, 13

Other Authorities:

EEOC's Guidelines on Discrimination
Because of Sex,
29 C.F.R. § 1604.1 (1984)..... 9, 12

No. 85-826

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MICHAELA BERESTEANU GOLIN,

Petitioner,

v.

BROOKHAVEN NATIONAL LABORATORY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

Brookhaven National Laboratory, ("Brookhaven" or "the Laboratory"), in its opposing brief No. 85-826, fails almost completely to meet the contentions

made in the petition for writ of certiorari. ("Pet.").

Additionally, Brookhaven's brief at a number of places misstates the record.

Petitioner shall attempt to correct here, as succinctly as possible, the errors in Brookhaven's opposing brief ("Brief in Opp.") which seem to be in most urgent need of correction.

In addition, pursuant to Rules 22.1 and 34.6 of this Court, petitioner prays the Court to disregard all the scandalous matter contained in the respondent's brief.

BROOKHAVEN'S BASIC MISCONCEPTIONS

1. BROOKHAVEN'S MISCONCEPTION OF THE "PRIMA FACIE CASE"

With respect to the conflict between the District Court's decision in the instant case and this Court's holdings in United States Postal Service Board of Governors v. Aikens, 460 U.S. 711 (1983), Brookhaven asserts that the "issue was not raised below." (Brief in Opp., at 14 & n.3).

Contrary to Brookhaven's assertion, the pro se plaintiff fully considered this matter and extensively quoted the teachings of Aikens in the timely Reply Brief for the Appellant filed below. (Reply Brief for the Appellant, at 3-4).

In that brief, Golin argued that the Trial Court's dismissal of her complaint "for failure to establish a prima facie case of employment discrimination under

Title VII of the Civil Rights Act of 1964, as amended", (Conclusion of Law #14, Appendix to Petition, ["App."], 38a; id., at 32a-36a), occurred at the close of the evidence, after the denial of Brookhaven's motion to dismiss, at a stage when the required establishment of a rebuttable presumption already had "drop[ped] from the case", Aikens, 460 U.S., at 715, and was "no longer relevant." Id.

In its opposing brief, Brookhaven fails to meet Golin's argument on the conflict between Aikens and the decision below. (Pet. 22-26). Instead, Brookhaven urges that the District Court's "purported misinterpretation of Aikens is hardly a question substantial enough to command Supreme Court review." (Brief in Opp., at 15).

Contrary to Brookhaven's interpretation, a lower court's similarly mistaken

view of the established Title VII precedent was considered substantial enough, not only to command review by this Court, but to cast doubts upon the District Court's findings of fact in favor of the employer. Aikens, 460 U.S., at 717.

Petitioner respectfully submits that the same reasoning is even more appropriate here. Indeed, if a District Court's mistaken interpretation of the phrase "prima facie case" in the Title VII context represented error before Aikens, now, in light of this Court's express holdings in Aikens, such a mistake is far more serious, and amply warrants review.

2. BROOKHAVEN'S MISCONCEPTION OF THE SEXUAL HARASSMENT ISSUE

A. The Laboratory's misreading of Vinson

Brookhaven asserts that Golin "failed to prove [a hostile-work-environment] claim even under Vinson's formulation of the law." (Brief in Opp., at 25).

However, in its brief, Brookhaven ignores almost entirely the holdings of Vinson v. Taylor, 753 F.2d 141 (CADC 1985), and urges instead its own hostile-work-environment theory of sexual harassment. (Brief in Opp., at 18-25).

Brookhaven's theory is wholly without foundation.

First, Brookhaven urges that Vinson is predicated on the existence of pervasive on-the-job sexual harassment, and particularly, on offenses such as assault, rape, and exhibitionism. (Brief

in Opp., at 20).

Neither the courts nor the EEOC have limited Title VII protection to transgressions of such nature and magnitude.

Contrary to Brookhaven's narrow interpretation of Vinson, the views of the District of Columbia Circuit are apparent from the Court's reliance on Bundy v. Jackson, 641 F.2d 934 (CADC 1981).

Although no physical violence had been alleged in Bundy, the Court pointed out that "[s]exual stereotyping through discriminatory dress requirements may be benign in intent, and may offend women only in a general, atmospheric manner, yet it violates Title VII. Racial slurs, though intentional and directed at individuals, may still be just verbal insults, yet they too may create Title VII liability. How then can sexual harassment, which injects the most demeaning sexual stereotypes into the

general work environment and which always represents an intentional assault on an individual's innermost privacy, not be illegal?" Bundy v. Jackson, 641 F.2d 934, 945 (CADC 1981) (emphasis added).

Petitioner respectfully submits that the pinching, nudging, obscenity, comments on her "willingness", etc., to which she was subjected by her supervisor, (Pet. 9-11), represent precisely the "'sexually stereotyped insults' or 'demeaning propositions' that illegally poisoned the 'psychological and emotional work environment'." Vinson, 753 F.2d, at 145 (footnote omitted).

Brookhaven additionally claims that it will not be held responsible for the alleged sexual harassment of Golin by Kahana, even if the Vinson theory of vicarious employer liability were upheld by this Court. (Brief in Opp., at 22-25).

In support of this proposition,

Brookhaven relies on Fisher v. Flynn, 598 F.2d 663 (CA1 1979), which conflicts with Vinson in all respects, and on Barnes v. Costle, 561 F.2d 983 (CADC 1977).

Citing Barnes, Brookhaven asserts that Kahana's alleged sexual harassment of Golin violated Laboratory policy. (Brief in Opp., at 24).

However, Vinson, which Brookhaven fails to quote, expressly holds that "[t]he bare existence of a company policy of nondiscrimination does not affect the employer's chargeability. [Vinson's employer] had such a policy, but it affords small comfort when violations go unrectified." 753 F.2d, at 150, n.71 (citations omitted); id., at 149, quoting with approval the EEOC Guidelines on Discrimination Because of Sex, ("Guidelines"), 29 C.F.R. § 1604.11(c) (employer strictly liable for sexual harassment by supervisory personnel, regardless of

whether the acts complained of were forbidden by the employer); see also Miller v. Bank of America, 600 F.2d 211, 213 (CA9 1979) (employer vicariously liable for the sexual harassment of a subordinate by her supervisor, even though supervisor violated company policy).

Brookhaven further asserts that Golin forfeited her opportunity for redress because she "impeded Brookhaven's investigation by refusing to give any specifics of her allegation to any Brookhaven official ***." (Brief in Opp., at 25, n.8).

Brookhaven's assertion is not only unsupported by any record references, but is actually contradicted by the record below. (Pl. Ex. 10, offered and admitted in evidence at Tr., Nov. 30, p. 67, full text reproduced at App. 58a-61a).

Moreover, the Laboratory fails to

meet Golin's contention that Brookhaven took no remedial action whatsoever even after Golin supplied it with additional "specifics" during the discovery stage below. (Pet. 46).

Finally, despite Brookhaven's assertion that Golin's Group Leader was not the kind of "supervising superior" referred to by Vinson, (Brief in Opp., at 23), Brookhaven, in its opposing brief, does not deny that Kahana "had the responsibility to recommend all the employment decisions affecting his subordinates, e.g., their hiring, firing, evaluation, promotion, salary." (Pet. 7) (emphasis added).

According to the Vinson Court, this supervisory responsibility is sufficient to hold Brookhaven vicariously liable for Kahana's violations of Title VII. Vinson, 753 F.2d, at 150 & n. 69; see also Miller, 600 F.2d, at 213.

For the foregoing reasons, as well as those presented in the petition, and because of the close identity of issues in this case and in PSFS Savings Bank, FSB v. Vinson, cert. granted, No. 84-1979, 106 S.Ct. 57 (1985), the petitioner prays this Court to grant certiorari and review the decision below.

B. The Laboratory's misconception of the quid pro quo issue.

Contrary to Brookhaven's assertion, (Brief in Opp., at 26), the causal nexus to an adverse employment decision required by the two federal courts below and by the First Circuit, Fisher v. Flynn, 598 F.2d 663, 665 (CA1 1979), is not required by other courts of appeals. See, e.g., Horn v. Duke Homes, 755 F.2d 599, 603-604 (CA7 1985); Henson v. City of Dundee, 682 F.2d 897, 909, 911, n.22 (CA11 1982); Cf. EEOC Guidelines, 29 C.F.R. § 1604.11(a)(1).

Brookhaven, in its opposing brief, entirely ignores Golin's argument that the quid pro quo pressure to which she was undisputedly subjected by Kahana, in itself represents a blatantly disparate treatment that violates Title VII. (Pet. 50-51). See, e.g., Horn, 755 F.2d, at 603-604; Henson, 682 F.2d, at 909-911, n.22.

Moreover, as petitioner already has shown at considerable length, (Pet. 51-59), a causal nexus to an adverse employment decision is abundantly demonstrated by the undisputed evidence below.

Indeed, in its opposing brief, Brookhaven does not deny the documented failure of its management to provide equality of opportunity for women scientists, (Pet. 6-7), nor the admitted long-time friendship between Kahana and the alleged "reviewers" of Golin's work.

(Pet. 13). This undisputed evidence makes plain that the reasons articulated by Brookhaven for the challenged employment decisions are simply pretexts.

For the foregoing reasons, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant the petition and review the decision below.

3. BROOKHAVEN'S MISCONCEPTION OF THE RETALIATION ISSUE

In its opposing brief, Brookhaven entirely ignores Golin's contention that the District Court made no findings whatsoever on the Laboratory's allegedly retaliatory denial of Golin's request for a transfer. (Pet. 60).

Brookhaven urges that the two federal courts below did not overlook Golin's retaliation claim, but rather "found it too frivolous to discuss." (Brief in Opp., at 30). No record

references are cited in support of this assertion, and petitioner believes that none are available.

In view of the Court of Appeals' summary affirmance, and the District Court's express failure to discuss Golin's retaliation claim, (App. 1a-3a), Brookhaven cannot impute its own reasoning to the two federal courts below. See, e.g., Taylor v. McKeithen, 407 U.S. 191, 194, n.4 (1972).

For the foregoing reasons, in addition to those contained in the petition for writ of certiorari, petitioner prays that a writ of certiorari issue to review the decision below.

CONCLUSION

Brookhaven does not deny the importance of the issues presented for review. Nor does it deny the existence of a conflict with prior decisions of this Court. The Laboratory's claim of a lack of conflict between the decision below and the decisions of other courts of appeals rests upon a number of gross misconceptions.

For the foregoing reasons, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant the petition and review the judgment below.

Respectfully submitted,
MICHAELA BERESTEANU GOLIN
626 Dutch Neck Road
East Windsor, NJ 08520
Telephone: (609) 448-6592
Petitioner, pro se

December 30, 1985